

Subpart J—Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Act

SOURCE: 69 FR 41683, July 9, 2004, unless otherwise noted.

§ 125.90 What are the purpose and scope of this subpart?

(a) This subpart establishes requirements that apply to the location, design, construction, and capacity of cooling water intake structures at existing facilities that are subject to this subpart (*i.e.*, Phase II existing facilities). The purpose of these requirements is to establish the best technology available for minimizing adverse environmental impact associated with the use of cooling water intake structures. These requirements are implemented through National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Clean Water Act (CWA).

(b) Existing facilities that are not subject to requirements under this or another subpart of this part must meet requirements under section 316(b) of the CWA determined by the Director on a case-by-case, best professional judgment (BPJ) basis.

(c) *Alternative regulatory requirements.* Notwithstanding any other provision of this subpart, if a State demonstrates to the Administrator that it has adopted alternative regulatory requirements in its NPDES program that will result in environmental performance within a watershed that is comparable to the reductions of impingement mortality and entrainment that would otherwise be achieved under § 125.94, the Administrator must approve such alternative regulatory requirements.

(d) Nothing in this subpart shall be construed to preclude or deny the right of any State or political subdivision of a State or any interstate agency under section 510 of the CWA to adopt or enforce any requirement with respect to control or abatement of pollution that is not less stringent than those required by Federal law.

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, § 125.90(a), (c), and (d) were suspended.

§ 125.91 What is a “Phase II Existing Facility”?

(a) An existing facility, as defined in § 125.93, is a Phase II existing facility subject to this subpart if it meets each of the following criteria:

(1) It is a point source.

(2) It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from waters of the United States;

(3) As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission; and

(4) It uses at least 25 percent of water withdrawn exclusively for cooling purposes, measured on an average annual basis.

(b) In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity will be considered for purposes of determining whether the 50 MGD and 25 percent criteria in paragraphs (a)(2) and (4) of this section have been exceeded.

(c) Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from waters of the United States but is not itself a Phase II existing facility, except as provided in paragraph (d) of this section. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a Phase II existing facility.

(d) Notwithstanding paragraph (c) of this section, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this subpart.

EFFECTIVE DATE NOTE: At 72 FR 37109, July 9, 2007, § 125.91 was suspended.